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ALEXANDER L. STEVAS,
CLERK

80-1969

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

NO. _____

STELLA G. MACEYAK,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

JAMES F. COMPANION
TERENCE M. GURLEY
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(304) 233-3390

Attorneys For Petitioner

QUESTIONS PRESENTED FOR REVIEW

(1) Was the petitioner denied due process of law by the trial court's pro se striking for cause potential jurors who acknowledged merely a passing acquaintance with the petitioner.

(2) Was there sufficient evidence for the jury to find the defendant guilty of violating 18 U.S.C. Section 1955 regarding the jurisdictional prerequisite of five or more individuals involved in an illegal gambling business.

(3) Was there sufficient evidence for the jury to find the petitioner guilty of a violation of a state law, a jurisdictional prerequisite of conviction under 18 U.S.C. Section 1955.

LIST OF ALL PARTIES

The caption of the case in this Court contains the names of all parties.

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1980

NO. _____

STELLA G. MACEYAK,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Stella G. Maceyak, of Weirton, West Virginia, respectfully petitions for a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Fourth Circuit previously entered in this case.

QUESTIONS PRESENTED FOR REVIEW

(1) Was the petitioner denied due process of law by the trial court's pro se striking for cause potential jurors who acknowledged merely a passing acquaintance with the petitioner.

(2) Was there sufficient evidence for the jury to find the defendant guilty of violating 18 U.S.C. Section 1955 regarding the jurisdictional prerequisite of five or more individuals involved in an illegal gambling business.

(3) Was there sufficient evidence for the jury to find the petitioner guilty of a violation of a state law, a jurisdictional prerequisite of conviction under 18 U.S.C. Section 1955.

LIST OF ALL PARTIES

The caption of the case in this Court contains the names of all parties.

OPINION BELOW

The opinion of the United States Court of Appeals For The Fourth Circuit is not reported but is attached hereto in the Appendix at pages

JURISDICTION

The judgment of the Court of Appeals for the Fourth Circuit was entered on February 20, 1981. A timely petition for rehearing was denied on March 20, 1981, and this petition for certiorari was filed within 60 days of the last mentioned date. This Court's jurisdiction is invoked under 28 U.S.C., Section 1254(1).

STATUTES INVOLVED

The statutory provisions involved in this case are as follows:

(1) The Federal Anti-Gambling Statute, 18 U.S.C., Section 1955;

(2) The West Virginia Statute relating to keeping or exhibiting gaming devices, West Virginia Code, Chapter 61, Article 10,

Section 1;

(3) The West Virginia Statute relating to lotteries, West Virginia Code, Chapter 61, Article 10, Section 11; and

(4) The West Virginia Statute relating to "policy" or "numbers" West Virginia Code, Chapter 61, Article 10, Section 11a.

The aforesaid statutes are set out verbatim in the Appendix hereto at pages

STATEMENT OF THE CASE

The petitioner was indicted on February 6, 1979, on a single count of violating Title 18, Section 1955 of the United States Code. She was convicted on April 12, 1979. She was sentenced on June 8, 1979, to serve six months of a five-year prison term, and pay a fine of Twenty Thousand Dollars ($20,000.00).

The petitioner filed a timely appeal of her conviction in the United States Court of Appeals for the Fourth Circuit. She based her appeal on two primary issues. First the manner in which the jury was selected.

Petitioner complained that the court's striking for cause of prospective jurors who merely knew who she was denied her the right to a fair trial and to a jury trial.

Second, petitioner's appeal attacked the sufficiency of the evidence regarding the jurisdictional prerequisite of violation of the State Law and the jurisdictional prerequisite of five or more participants.

On February 20, 1981, the Fourth Circuit Court of Appeals affirmed the conviction.

With respect to the issue of jury selection, the Fourth Circuit apparently overlooked the question. At least it chose not to address it specifically, devoting most of its attention to the jurisdictional prerequisite of numbers.

ARGUMENT

I.

APPELLANT WAS DENIED HER RIGHTS TO A JURY TRIAL AND TO A FAIR TRIAL AS A RESULT OF THE DISMISSAL FOR CAUSE OF PARTICULAR POTENTIAL JURORS.

Finding Appellant's argument to be "without merit", the Fourth Circuit in two words of a per curiam opinion dismissed her contentions of improper jury selection.

While Appellant recognizes that the trial court's discretion is broad, she does not concede that it is limitless. Its duty to empanel a fair jury is serious, and it must determine actual bias. See Dennis v. United States, 1950, 339 US 162, at 168; 70 Sup. Ct. 519, at 521; 94 L.Ed. 734, at 740 (emphasis supplied).

The Appellant agrees with the government that it is within the Court's discretion to excuse a juror whom it believes is not able to give both sides a fair trial. United States v. Rodriguez, 459 Fed.2d 983, at 984 (9th Cir., 1972), cert. denied 409 US 865 (1972); United States vs. Puff, 211 Fed.2d 171, at 185(2nd Cir., 1954), cert denied 347 US 963 (1954). But the record, at least in the

case of one juror[1], is clearly inapposite and hence the discretion was abused, Appellant was denied her right to both a fair and a jury trial and this Court should reverse.

---

[1] THE COURT: Let me put it this way: Do you feel that by virtue of merely knowing who she is that that would make you in any way uncomfortable to sit and resolve the factual issue in this case?

PROSPECTIVE JUROR RUJAK: No.

PROSPECTIVE JUROR DUCO: Your Honor, I am familiar with Mrs. Maceyak. I don't think it would prejudice my opinion one way or the other.

THE COURT: But you do know her personally?

PROSPECTIVE JUROR DUCO: Yes, sir.

THE COURT: Have you had any social or business dealings with her in the past, if you know?

PROSPECTIVE JUROR DUCO: She owned anestablishment I used to drop in and get a drink occasionally.

THE COURT: Is that the establishment here, the VIP Club?

PROSPECTIVE JUROR DUCO: Yes, Sir.

THE COURT: Well, I think under those circumstances, I better excuse you from this panel. So, if you would, stand aside, sir.

(Appendix, At 2)

II.

THERE WAS INSUFFICIENT EVIDENCE OF VIOLATION OF STATE LAW PRESENTED BY THE GOVERNMENT AT THE TRIAL OF THE PETITIONER AND THEREFORE A JURISDICTIONAL PREREQUISITE TO CONVICTION UNDER 18 U.S.C., 1955 IS FATALLY LACKING.

The trial court, in its instructions to the jury which took up an excess of 20 pages of transcript, stated:

> Now, you are instructed by me that betting through the use of parlay sheets, wagering on numbers and electronic digital numbers machine and on two electric slot machines, all are unlawful in the State of West Virginia (Transcript at 279)

The United States Court of Appeals for the Fourth Circuit, in its opinion below, endorsed this instruction, finding that " . . . the judge did not in any way instruct the jury regarding the illegality of the equipment. He merely instructed them that <u>betting</u> or <u>wagering</u> on or through the use of the various paraphernalia constituted gambling under the Laws of West Virginia. He then properly left to the jury's discretion the question whether

Maceyak and the others were, in fact, engaging in such betting and wagering." The Fourth Circuit cited United States v. Crockett, 506 Fed.2d 759, at 761 (5th Cir. 1975) to support its analysis of the jury instructions. A careful reading of Crockett, however, finds that support to be questionable.

In Crockett the Fifth Circuit found that the trial court properly insulated its language regarding the violation of state law and appears to have relied on this curing explanatory language to uphold the instruction as given.

The clarity and precision of Crockett speaks for itself:

> Appellants argue the court's instruction to the jury on count two directed a 'partial verdict of guilty.' In order to be convicted under 18 U.S.C. §1955, a defendant must be found to have 'conduct[ed], finance[d],' etc., a 'gambling business' which 'is a violation of the law of a State or political subdivision in which it is conducted.' Thus, in order to violate federal law, one must first be guilty of violating state or local law. Appellants contention is based on the district judge's failure

to read or paraphrase to the jury the pertinent Georgia Code sections making it illegal to conduct a gambling business in the state. Rather, he instructed them that, 'I am just going to tell you, as a matter of law, that the operation of a commercial gambling establishment is in violation of Georgia law.' Although this instruction, standing alone, might have given the jury the erroneous impression that the issue of state law violation was foreclosed from their consideration, the judge corrected any possible misunderstanding immediately by adding:

> [T]he prosecution . . . has[s] to prove that it is a violation of the law of the state. Well, I have already charged you that the law of the state of Georgia prohibits commercial gambling enterprises. Now, second, I expressed no opinion about this one way or the other because you are the sole judges of the facts. I am telling you what the law is, but you are the sole judges of the facts. (Emphasis supplied in original Fifth Circuit Opinion) Ibid.

Therefore, it becomes clear that had the trial court in the case at hand buffered its quasi-directed verdict language with the type curtive insulation that the Fifth Circuit applauded in Crockett the Fourth Circuit reliance on Crockett would be appropriate. An examination of the record in the trial at

hand, however, does not reveal such protective language and therefore reliance on Crockett is misplaced, and the petitioner was denied a fair trial as a result of the unfortunate instruction.

III.

THERE WAS INSUFFICIENT EVIDENCE THAT FIVE OR MORE PEOPLE CONDUCTED, FINANCED, MANAGED, SUPERVISED, DIRECTED OR OWNED ALL OR PART OF THE ALLEGED GAMBLING BUSINESS, AND THEREFORE A JURISDICTIONAL PREREQUISITE TO CONVICTION UNDER 18 U.S.C. 1955 WAS FATALLY LACKING.

The petitioner agrees with the United States Court of Appeals for the Fourth Circuit that the evidence must be viewed in the light most favorable to the government, Glasser v. United States, 315 U.S. 60 at 80 (1942) and resolve all reasonable inferences . . . in support of the jury verdict, United States vs. Laughman, 618 Fed.2d 1067, at 1075 (4th Cir.) 1979 cert denied ___U.S. ___ (1980). (Emphasis supplied.)

Petitioner further urges that a careful reading of the record herein does not give rise to any reasonable inference that the

gambling business involved at least five people at all times for 30 days. This is the operative language in the case on which the Fourth Circuit relied and, petitioner believes, misinterpreted. United States vs. Gresko, 632 Fed.2d 1128, at 1133 (4th Cir.) (1980).

CONCLUSION

Based on the above, petitioner respectfully urges that she was denied a fair trial as a result of the manner in which the jury was selected, the insufficiency of the evidence regarding the jurisdictional prerequisite of violation of state law and minimum number of participants upon which a valid conviction under 18 U.S.C. 1955 may be based. Therefore, a writ of certiorari should issue to review the judgment and opinion of the Fourth Circuit.

RESPECTFULLY SUBMITTED:

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Terence M. Gurley, Esquire
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ATTORNEYS FOR PETITIONER

MAY 18, 1981

APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 79-5200

UNITED STATES OF AMERICA,

Appellee,

versus

STELLA G. MACEYAK,

Appellant.

Appeal from the United States District Court for the Northern District of West Virginia, at Parkersburg. Charles H. Haden, II, Judge.

Argued: November 14, 1980

Decided: February 20, 1981

Before INGRAHAM, Senior Circuit Judge,* HALL and SPROUSE, Circuit Judges.

Arthur M. Recht(Terence M. Gurley, Schrader, Stamp & Recht of brief) for Appellant; William A. Kolibash, Assistant United States Attorney (Stephen G. Jory, United States Attorney, Betsy C. Steinfeld, Assistant United States Attorney on brief) for Appellee.

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*Honorable Joe M. Ingraham, Senior United States Circuit Judge for the Fifth Circuit, sitting by designation.

PER CURIAM:

Stella Maceyak owned the VIP Club in Weirton, Hancock County, West Virginia. As a result of an extensive undercover investigation conducted in Hancock County by state and federal officers, the government brought Maceyak to trial on federal gambling charges in the Northern District of West Virginia. She was convicted of operating an illegal gambling business in violation of 18 U.S.C. §1955 (1976). On her appeal, she argues that there was insufficient evidence to support the guilty verdict since the government did not prove beyond a reasonable doubt that there was five jurisdictional persons, within the sense of section 1955, involved in the business for a period in excess of thirty days.[1] She also argues that

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[1]For an explanation of what the government must prove in order to make out a §1955 case in this circuit, see United States v. Gresko, 632 F.2d 1128, 1132-33 (4th Cir. 1980).

the district judge gave the jury an improper charge that effectively removed from their consideration the factual question whether she violated the gambling laws of West Virginia. We affirm her conviction.

In order to assess the validity of her challenge to the sufficiency of the evidence, we turn now to an examination of the record. In this endeavor we must view the evidence in the light most favorable to the government, Glasser v. United States, 315 U.S. 60, 80 (1942), and resolve all reasonable inferences and credibility choices in support of the jury verdict, see United States v. Laughman, 618 F.2d 1067, 1075 (4th Cir.), cert. denied, ____ U.S. ____ (1980).

The record shows that Maceyak conducted gambling activity in the VIP Club on numerous occasions between September 30, 1978, and January 26, 1979, the date of the government's raid on the establishment. She does not contest, for present purposes, the propriety of counting her among the five.

The record also shows that Dale Schon, who serviced certain gambling machines, collected money therefrom, and split the proceeds with Maceyak, conducted gambling activity at the VIP Club on at least three occasions from October 23, 1978, through January 15, 1979.[2] The jury could reasonably infer that Schon was conducting gambling activities, as that term is understood by section 1955, at the VIP Club during this entire period. See Gresko, 632 F.2d at 1133. The jury also could reasonably infer that Schon was involved for respectively a few days before and a few days after the first and last dates on which he was specifically identified by undercover agents.

The record further shows that a woman named Angie was conducting gambling activity at

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[2]Although the district court did not include Dale Schon as being one of the necessary five persons, neither did it hold that Schon could not be so counted. The record makes clear that the district judge merely felt that there were five jurisdictional persons reflected in the testimony, even without having to count Schon.

the VIP Club on several occasions during the period from November 11, 1978, through January 11, 1979. The jury could reasonably infer that Angie was involved in the gambling during that entire period, as well as for a few days before and a few days after.[3] Thus, so far, we have three jurisdictional persons in the VIP Club for at least that period from early November through sometime after mid-January.

A careful reading of the record shows that the jury could reasonably believe that there were at least two other persons involved on a regular basis in the gambling at the club during the period from December 19, 1978, through January 19, 1979. Troopers Clark and Richards saw "two other women" taking bets

---

[3]Without relying thereupon for our holding, we note that the jury was permitted to hear without objection testimony that some person telephoned the VIP Club looking for Angie on January 26, 1979, the date of the raid.

at the club on December 19, 1978. Neither of these women was Maceyak. On January 19, 1979, Troopers Clark and Richards were again at the VIP Club and observed "two other women," neither of which was Maceyak. Troopers Richards and Clark had previously observed the woman they knew as Angie taking bets on November 11, 1978. Therefore, when they testified that they had observed "two other females" besides Maceyak on December 19 and January 19, the jury could reasonably believe that neither of those "two other women" was the woman they knew as Angie.

The jury further could infer that those two women were engaged in the gambling operation during the entire period from December 19, 1978, through January 19, 1979, as well as for a few days before and a few days after that period. Thus, we now count five jurisdictional persons involved in the gambling operation

at the VIP Club[4] during the period from mid-December 1978 through mid-January 1979. It does not matter that the two women were not identified by name or that they might not have been the same two women on each occasion.

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[4]At trial and at oral argument on appeal, the government sought to rely on the presence of Maceyak's husband, John, a man named Paul, and a woman named Helen. Officers testified thay they observed Helen in the VIP Club only on January 23, 1979. They also testified that they observed Paul in the club only on January 11, 1979. Absent some showing that these persons worked on a rotating basis with one or more other persons during some thirty day period, we might be reluctant to count them as jurisdictional persons in satisfaction of the threshold requirements of § 1955. In view of our resolution of this case, however, we need not decide this question. The same is true about John Maceyak, who was observed in the VIP Club only on January 18 and January 20, 1979, and against whom no other testimony was offered concerning his ownership of or involvement in the club.

Cf. Gresko, 632 F.2d at 1132-33 (since magnitude of gambling does not depend on identities of operators, statute does not require that same five people be involved for entire thirty day period). Section 1955 is satisfied when there are at least five persons who "conduct, finance, manage, supervise, direct or own" a gambling operation during some period in excess of thirty days. There is evidence in the record to support the verdict of the jury. Therefore, we must reject Maceyak's attack on the sufficiency of the evidence necessary to support her conviction.

Maceyak also argues that the evidence is insufficient to support her conviction under section 1955 since the jury was not permitted to determine as a matter of fact that the activities at the VIP Club violated the requisite underlying state statute. She argues that the trial judge in effect directed a verdict on that issue by characterizing the paraphernalia found in the club as gambling

devices. According to Maceyak, there were certain features of the equipment in question that took the equipment outside of the prohibitory statute. The simple answer to this argument is that the judge did not in any way instruct the jury regarding the illegality of the equipment. He merely instructed them that betting or wagering on or through the use of the various paraphernalia constituted gambling under the laws of West Virginia. He then properly left to the jury's discretion the question whether Maceyak and the others were in fact engaging in such betting and wagering. Cf. United States v. Crockett, 506 F.2d 759, 761 (5th Cir. 1975).

We have examined other arguments raised by Maceyak in her brief on appeal and find them to be without merit. Accordingly, the judgment of the district court is

AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

DOCKET NUMBER: Cr. 79-00008-E(H)

UNITED STATES OF AMERICA vs.
Defendant:
STELLA G. MACEYAK

JUDGMENT AND PROBATION/
COMMITMENT ORDER

In the presence of the attorney for the government the defendant appeared in person on this date - - - June 4, 1979.

COUNSEL

/__/ Without Counsel

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

/XX/ With Counsel

John R. Mitchell (Name of counsel)

PLEA

/__/ GUILTY, and the court being satisfied that there is a factual basis for the plea,

/__/ NOLO CONTENDERE,

/XX/ NOT GUILTY

There being a verdict of : /__/ NOT GUILTY, Defendant is Discharged

/XX/ GUILTY.

FINDING & JUDGMENT

Defendant has been convicted as charged of the offense(s) of unlawfully, willfully, and knowingly conducting, financing, managing, supervising, directing, and owning an illegal gambling business, in violation of Title 18, Section 1955, United States Code, as charged in the Indictment.

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Five(5) Years. Pursuant to the provisions of Title 18, Section 2651, United States Code, the Court ORDERED that the execution of all but six months of

said five-year sentence be suspended and the defendant was placed on probation for a period of four (4) years, six (6) months. The Court further ORDERED that the defendant pay a fine in the amount of $20,000.00.

Without objection, the Court ORDERED that the defendant's bond be continued pending appeal.

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, by issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends, that the defendant be placed in a minimum security facility.

SIGNED BY: United States District Judge

CHARLES H. HADEN

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

CERTIFIED AS A TRUE COPY ON
THIS DATE 6/8/79, By
Ruth M. Paugh, Deputy

U.S. DISTRICT COURT
FILED AT ELKINS, W.VA.

June 8, 1979

THOMAS F. STAFFORD, CLERK

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

February 20, 1981

TO: Arthur M. Recht, Esquire
Stephen G. Jory, Esquire
William A. Kolibash, Esquire

NOTICE OF JUDGMENT

Judgment was entered in Case No. 79-5200 this date.

The Court's opinion is enclosed.

Petition for Rehearing (FRAP 40)

Filing Time — A petition may be filed within 14 days after judgment. No extension will be granted save for the most compelling reasons. Requests based on grounds such as miscalculation of time or a need to consult with others will be peremptorily denied.

Purpose

A petition should only be made to direct the Court's attention to one or more of the following situations:

1. A material fact or law overlooked in the decision.

2. A change in the law which occurred after the case was submitted and which was overlooked by the panel.

3. An apparent conflict with another decision of the Court which is not addressed in the opinion.

The filing of a petition in order merely to reargue the case is an abuse of the privilege.

Statement of Counsel — A petition shall contain an introduction stating that, in counsel's judgment, one or more of the situations exist as described in the above "Purpose Section". The points to be raised shall be succinctly listed in the statement. Lacking such a statement, the petition will be returned to counsel without filing.

Form — The 15 page limit allowed by the Rule shall be observed. The Court requires 15 copies of the petition; however, a pro se party who is indigent may file the original only.

Bill of Costs (FRAP 39)

Filing Time — A party to whom costs are allowed, who desires taxation of costs, shall file a bill of costs within 14 days after judgment

Mandate (FRAP 41)

Issuance Time — The mandate is issued 21 days after judgment. A timely petition for rehearing will stay the issuance. If the petition is denied, the mandate will issue 7 days later. If a stay of mandate is sought, only the original of a motion need be filed.

WILLIAM K. SLATE, II
CLERK

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 79-5200

United States of America,

Appellee,

versus

Stella G. Maceyak,

Appellant.

ORDER

Upon consideration of the appellant's petition for rehearing,

IT IS ORDERED that the petition is DENIED.

Entered at the direction of Judge Ingraham (5USCJ), with the concurrence of Judge Hall and Judge Sprouse.

For the Court,

/s/ William K. Slate, II
Clerk

FILED
March 20, 1981

U.S. Court of Appeals
Fourth Circuit

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA

v.

STELLA G. MACEYAK

CRIMINAL NO. 79-00008-E

Title 18, Section 1955,
United States Code

INDICTMENT

THE GRAND JURY CHARGES:

COUNT I

From on or about September 30, 1978, and continuously thereafter up to and including January 26, 1979, in Weirton, Hancock County, West Virginia, in the Northern Judicial District of West Virginia, STELLA G. MACEYAK, the defendant herein, did unlawfully, willfully and knowingly conduct, finance, manage supervise, direct, and own all of an illegal gambling business under the firm name and style of V.I.P. Club, located at the corner of Pennsylvania Avenue and Belleview Drive, Weirton, West Virginia, said illegal gambling

business involved sports betting through the use of parlay sheets, wagering on numbers, maintaining an electronic digital numbers machine and an electric slot machine, in violation of the laws of the State of West Virginia, Chapter 61, Article 10, Sections 1, 5, 11 and 11a of the West Virginia Code, in which said business was conducted; said illegal gambling business involved, during the period aforesaid, five persons and others whose identity is to the Grand Jury unknown who conducted, financed, managed, supervised, directed, and owned all thereof and said gambling business remained in substantially continuous operation for a period in excess of thirty days and had a gross revenue of $2,000.00 in any single day, in violation of Title 18, Section 1955, United States Code.

A TRUE BILL.

/s/ F. Robert Valentine
Foreman

Stephen G. Jory
United States
Attorney

U.S. DISTRICT COURT
FILED AT ELKINS, W.VA.

February 6, 1979

THOMAS F. STAFFORD, Clerk

I hereby certify that the annexed instrument is a true and correct copy of the original on file in my office. Attest: Thomas F. Stafford, Clerk, U.S. District Court Northern District of West Virginia

By: Pauluie S. Linn, Deputy Clerk